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No. 571

In the Supreme Court of the United States

OCTOBER TERM, 1968

WOLF LOW, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 371

WOLF LOW, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The judgment of the court of appeals affirming petitioner's conviction for receiving, concealing and facilitating the transportation and concealment of watch movements unlawfully smuggled into the United States in violation of 18 U.S.C. 545 was entered on March 6, 1968. A petition for a rehearing was denied on April 22, 1968. On July 1, 1968, Mr. Justice Douglas granted petitioner's application, filed that day, for an extension of time until August 2, 1968, to file a petition for a writ of certiorari. The application rep-

resented that the order denying rehearing was entered on June 3, 1968, while in fact it was the mandate of the court of appeals which was issued on that date. The petition is therefore out of time under Rule 22(2) of this Court.

In any event, the petition is without merit. Petitioner purchased a one-way airline ticket from Los Angeles, California, to Las Vegas, Nevada, and presented two suitcases as baggage (II R. 51). The airline personnel, suspecting that the suitcases might contain explosives (II R. 8-10, 25, 45, 48),[1] held them off the plane and unlocked and opened them (II R. 18, 45). A police officer assigned to the airport was requested to witness the opening of the suitcases (II R. 49-50), and to assist in finding from the airline's supply a key that would open them (II R. 45). The tariff rules, set by the C.A.B., authorize airlines to open and inspect any baggage tendered for transportation (II R. 16, 47-48), and airline personnel are instructed to open and inspect passengers' baggage if they are doubtful about its contents (II R. 22).

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[1] Suspicion was aroused because petitioner, unlike most passengers, did not argue about the overweight charge placed on his baggage and yet carried the baggage to the ticket counter instead of engaging a porter to do so; because the suitcases were packed more tightly than is usual; because petitioner bought a one-way ticket and requested the ticket agent to supply him with a large number of quarters, raising the possibility that he intended to purchase an inordinate amount of insurance; and because when petitioner was requested to open the suitcases in order to identify them (the baggage tags having been removed to make the request appear reasonable), he merely turned his key in the locks but did not open them (II R. 9-11, 14-15, 22-24, 44).

When the suitcases were opened, they were found to be filled with watches, wrapped in foam rubber. At the suggestion of the police officer, a customs official was summoned (II R. 19, 46). His examination of the watches disclosed that the movements lacked the importer's symbol which is placed, pursuant to treaty, upon all lawfully imported watch movements by the Swiss manufacturers (II R. 40-41).[2] Petitioner was then advised, in accordance with the established routine when baggage is inadvertently left off a passenger's flight, that his suitcases would be on the next flight and that he could pick them up when that flight arrived in Las Vegas (II R. 35, 39). When petitioner claimed his suitcases and placed them in his automobile, he was arrested and the suitcases and watches were seized.

The initial inspection of the baggage by the airline personnel was a reasonable and proper exercise of their responsibility to protect the safety of their planes and passengers. Compare *United States* v. *Blum*, 329 F. 2d 49, 52 (C.A. 2), certiorari denied, 377 U.S. 993. The result of their inspection, which was properly called to the attention of the custom officials, created probable cause to believe that the baggage contained unlawfully imported, and hence con-

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[2] The customs official did not attempt to obtain a search warrant before going to the airport to examine the baggage because it was Sunday and the commissioner's office was closed (II R. 36-37, 40). Time was of the essence, since if the suitcases were not placed on the next flight to Las Vegas, petitioner might have become suspicious and not appeared to claim them, and there was no information as to where he could be located if he did not appear (II R. 32-33).

traband, watches. Petitioner's right of privacy in his baggage was already fully breached when the airlines officials made their lawful inspection of it. Moreover, "exceptional circumstances" existed justifying search of the baggage by customs officials without a warrant. See *Hernandez* v. *United States*, 353 F. 2d 624, 627 (C.A. 9), certiorari denied, 384 U.S. 1008. The arrest of petitioner and seizure of the baggage incident thereto was therefore justified. This case is different from *Corngold* v. *United States*, 367 F. 2d 1 (C.A. 9), where the initial inspection was at the specific request of government agents and was conducted for the sole purpose of discovering contraband. Any possible conflict between the two cases is, contrary to petitioner's assertion (Pet. 28), a matter for the Ninth Circuit to resolve.

For the foregoing reasons, it is respectfuly submitted that the petition for a writ of certiorari should be denied.

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